

TRANSPORTATION REPORT

From: Terry Whiteside

To: Montana Wheat & Barley Committee

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Rockefeller Introduces Railroad Reform Bill To Increase Rail Competition and Reauthorize the STB (S. 158)

Chairman John D. (Jay) Rockefeller IV dropped his bill in the hopper on January 26th stating that his bill will reform the rail industry will improve rail service, create new jobs and make the industry and U.S. goods more competitive both here and abroad.

The Bill will be known as the Surface Transportation Board Reauthorization Act of 2011 and will be a priority for the Commerce Committee this year. He also noted that President Obama used his State of the Union address to encourage Congress to “redouble” efforts to rebuild America’s infrastructure and create jobs. Senator Rockefeller introduced the bill last night.

“America is long overdue for a competitive, efficient, and balanced transportation network,” Chairman Rockefeller said. “It is crucial to the health of our economy and the future of our rural communities. That is why I have reintroduced the Surface Transportation Board Reauthorization Act. During this critical period for our economy, it is essential that we act now to effectively meet our country’s transportation needs for the 21st century. I look forward to working with my colleagues to tackle these reforms.”

The legislation would:

Increase rail competition by requiring major railroads to quote “bottleneck rates,” setting standards for “reciprocal switching” and “terminal access” rates, creating a process for parties to challenge “paper barriers,” and increasing Surface Transportation Board (STB) scrutiny of future railroad mergers for competitive, service, and environmental effects; Strengthen STB oversight of the railroad industry by updating the rail transportation policy, giving the Board independent investigative authority, and creating a strong rail customer advocate to help resolve shippers’ concerns; and Improve shippers’ access to regulatory relief by improving the processes by which rate complaints are resolved, requiring railroads to provide service standards to shippers, requiring the STB to review current class exemptions for unregulated railroad traffic, and by setting lower fees for filing complaints at the STB.

Railroad Antitrust Enforcement Act of 2011 is introduced by Senator Kohl and Senators Vitter, Leahy, Hatch, Klobuchar, Franken and Tester. The legislation is identical

to the legislation that was reported by the Senate Judiciary Committee early in 2009 as S.146.

This legislation will eliminate unwarranted and outmoded antitrust exemptions that protect freight railroads from competition and result in higher prices to millions of consumers every day. Consolidation in the railroad industry in recent years has resulted in only four Class I railroads providing nearly 90 percent of the nation's freight rail transportation, as measured by revenue. The harmful result of this industry concentration for railroad shippers is well documented. A 2006 General Accounting Office Report found that shippers in many geographic areas "may be paying excessive rates due to a lack of competition in these markets." These unjustified cost increases cause consumers to suffer higher electricity bills because a utility must pay for the high cost of transporting coal, result in higher prices for goods produced by manufacturers who rely on railroads to transport raw materials, and reduce earnings for American farmers who ship their products by rail and raise food prices paid by consumers.

A recent staff report (issued September 15, 2010) of the Committee on Commerce, Science, and Transportation also makes clear how railroads have benefited from the unique combination of deregulation and large-scale antitrust immunity, to the detriment of rail shippers and consumers. This Report – titled "The Current State of the Class I Freight Rail Industry" – stated that "[t]he four Class I railroads that today dominate the U.S. rail shipping market are achieving returns on revenue and operating ratios that rank them among the most profitable businesses in the U.S. economy." The four largest railroads nearly doubled their collective profit margins in the last decade to 13%, ranking the railroad industry the fifth most profitable industry as ranking by Fortune magazine.

Increased concentration and lack of antitrust scrutiny have had clear price effects – according to the Commerce Committee Report, since 2004, "Class I railroads have been raising prices by an average of 5% a year above inflation." The recent Commerce Committee Report concluded that "Class I freight railroads have regained the pricing power they lacked in the 1980s, and are now some of the most highly profitable businesses in the U.S. economy." Given the industry's concentration and pricing power, the case for full fledged application of the antitrust laws is plain.

House Transportation and Infrastructure Committee tries to bully the STB even before the STB proceeding on rail competition has its first filing

The leadership of the House Transportation and Infrastructure Committee will oppose regulatory efforts intended to inject more competition into the freight rail industry, putting them at odds with their Senate counterparts.

At issue is a long-simmering fight over whether railroads are price-gouging some of their customers, particularly power companies and other heavy industries whose plants are served by just one railroad. Railroads counter that these shippers have other options, and argue that more regulations would be too costly to their industry.

Recently the Surface Transportation Board (STB), which adjudicates railroad rate and service disputes as well as some trucking and maritime cases, said it plans to take up the issue, first by holding a hearing in May.

In a letter dated Jan. 24 and released Thursday, House Transportation and Infrastructure Chairman John L. Mica, R-Fla., and ranking Democrat Nick J. Rahall II of West Virginia urged the board to maintain the status quo.

Editors note: The railroads are obviously trying to bully the STB in this effort when the STB is simply opening a proceeding to explore the massive consolidations that have occurred in this industry since 1980. Where in the country's gone from 45+Class I railroads to today only 7 exist with four of those controlling over 95% of the business.

LET THE GAMES BEGIN!